

Criminal Law Policy Formulation to Prevent Cybersex Based on Civility Values

Mufti Khakim¹, Supanto², Widodo Tresno Novianto³
^{1,2,3} Universitas Sebelas Maret, Surakarta - Indonesia
 muftihakim77@gmail.com

Abstract- Cybersex is an ethical problem of using information technology media. Cybersex is more than sexual satisfying through information technology, but it has become a commercial product for producers and consumers and also it has been publicly marketed to get cybersex services. The consumers are not limited by age. The actions in cyberspace are often assumed to be value free, however, the cyberspace action is not only about private action, but it also attached to public morality. This research aims to analyse about formulating criminal law policy to prevent cybersex that is reflective and prescriptive analysis based on civility values. This research is a normative research with legislation approach, policy approach and value approach. The result is a policy formulation of criminal law about cybersex prevention as public moral responsibility to the civilization based on civility values.

Keywords- *Cybersex, Criminal Law Policy Formulation, Law Morality.*

I. INTRODUCTION

The quantity of Indonesia social media usage has significantly increase. According to Verisign research, Indonesia has become the highest internet media user [1]. There are many benefits and achievements from the technology development, however it also happen for the negative effects. One of negative effects is the cybercrime or criminal act in cyberspace. According to APJII (Indonesian Internet Network Providers Association) survey in 2019, from 264 million population of Indonesia, 171.17 million people or 64.8 % are connected to internet [2]. The number show significant development compared to 2017 survey with 54.86 % of Indonesia population who are connected to internet.

Criminal law has power to regulate actions or to prevent actions which are harmful to the society or to direct society to fit the goals of the state. Criminal law has unique power to force people and has power to give punishment to people who disobeyed the law. The punishment of criminal law is in for of misery and suffering which make people to obey the law. Nevertheless, the usage of criminal law should not be careless, therefore experts suggest has many requirement to decide whether an action can be criminalized or not, whether an action can be given a punishment or not. Prof. Sudarto reminded that if we want to use criminal law as a part of social policy in preventing negative things in society, including crime prevention, it must be seen as a whole about criminal politics and an integral part of the national development plan [3].

Cybersex is a part of residue from the advanced technology with massive level of distribution. Further, cybersex has economic value by providing sex services by using information technology. The distribution of cybersex is not limited by age, or place as long as they are connected to internet by phone or computer. Sexual desire is a natural gift for people. This sexual satisfaction tethered with technology so called as cybersex or cyberspace sex. Cybersex is defined as “a combination of communication and masturbation”.

In the life of nation and country are inseparable to high values as common agreement for all Indonesia as stated in Pancasila. Indonesia has always been had high respect for civility values. Thus, in order to cultivate the civilization of Indonesia, all the action should be in line with Pancasila’s value as the source of value to live in nation and country as Indonesia. So, the usage of advanced technology should not cross the values of Pancasila, especially second verse of Pancasila. Considering the background, the research on Criminal law policy formulation to prevent cybersex based on civility values is conducted. This research is concentrated on analysing on what is the urgent of cybersex to be regulated on criminal law based on civility value?

II. RESEARCH METHOD

The researches employed three legal approaches: juridical approach, policy approach, and value approach. Juridical approach serves to understand the law from the normative rules. Policy approach is used in taking the decision oriented to the expected goals. Value approach serves to understand the function of particular regulation from the perspective of values underlying the establishment of the regulations. The data are analyzed using qualitative analysis, describing the research data into components through a series of words and/or images. The conclusion is resolved by descriptive qualitatively

III. FINDING AND DISCUSSION

1. Criminal law policy

Criminal law policy is a part of public policy for protecting the society to protect community from crime or harmful action in order to gain public welfare [3]. There are three phases of crime prevention; formulation phase (legislative policy), implementation phase (judicial

policy), and execution phase (executive/administrative) [4].

Criminalization is a process to define an act which is previously not a criminal act or not stated in criminal law to be a crime or to be stated in criminal law as the community demands. There are two major problems for deciding an act to be criminalized or stated on criminal law policy; what action will be stated and what the punishment for the stated crime are. Sudarto propose four principles to be consider for criminalizing an action: The use criminal law should in line with the direction and objectives of national development. Acts which are attempted to be prevented or overcome by criminal law must be undesirable actions. The use of criminal law must also take into account the principle of costs and results. The use of criminal law should never be ovebelasting [5].

The use of law as social defence and as part of social policy to achieve public objective, so according to Bernard L. Tanya law policy should be developed based on ideology, normativity, constitutionally and morality. Formulative policy is the initial stage to determine whether an action will be included as a criminal offense or not with the consequences of criminal sanctions. The basic value of ideology in this case the Pancasila becomes the norm that animates the formation of law. Pancasila as the source of all sources of law becomes a reference value that must be moved.

2. Policy Formulation of Criminal Law Based on Civilization

Criminal law policy with all its excess can be used as instrument to achieve Indonesia national goal. Government may use the criminal law policy for maintaining believed values in order to continue and apply the values in society. Further, criminal law can direct changes in society in accordance with the changes desired. The nature of forced power is one of the strengths of criminal law to ensure that what is regulated therein must be obeyed by the whole community. According to Barda Nawawi criminal law policy is part of social policy, criminal policy, and law enforcement policy [6].

Criminal law is always related to what values are to be maintained in society. The Indonesian Nation has the guidance of values as set out in the five basic values that are the basis as well as the goals of the Indonesian nation namely Pancasila. Pancasila is a reference or source of value for the life of the Indonesian people. Divine Value, Humanity which is fair and civilized. Civilization, unity, consultation and social justice. The value of civility placed in a just human being within the Indonesian is important to be the basis in the formulation of the formulation of laws relating to morality. Civility cannot be separated from moral values, and religious values that are believed. The intended moral value is morality which

enhances Indonesian human civilization, this value guarantees inner balance and inner peace.

The values formed in the Indonesian people cannot be separated from religious values, cultural values, tradition values and also values which then become a mutual agreement. The sentence of fair and civilized humanity is a summary and the crystallization of values that live within the Indonesian people which form the basis or benchmarks of the behaviour of the Indonesian people. The criminal law policy which regulates decency as part of the duty of the state ensures that this value will be obeyed and maintained. The attack on decency results in an immaterial nature. This loss is in the form of disturbance to the peace and peace of the human spirit. The regulation and enforcement of moral values as a moral characteristic of Indonesian civilization and culture. The value of civilization as well as an effort to fortify the Indonesian people from destructive civilization. For example the civilization about free sex, cohabiting, pornography which for Indonesian people is a severe reproach.

The criminal law formulation policy is part of the stages of preparing a criminal law policy. In this formulation policy, values are set for what the Indonesian people want to maintain and what sanctions will be imposed if the sanctions are violated. Cybersex which is a combination of communication with masturbation using the internet media to disturb the value of decency and morality that leads to low civility. Therefore, cybersex is commercialized and part of the attack on moral values especially cybersex is carried out publicly. The cybersex which is done publicly is cybersex which can be enjoyed together or watching together. Strict arrangements need to be made in order to ensure that cybersex acts are part of a destructive culture that comes from outside the Indonesia.

3. Cybersex

Sex needs are a natural human need but become a problem when freely done. Many website provide nudity content. Papu, a psychologist, stated in 2001 that 50% of internet users in Indonesia cannot resist to access porn site. Stated that the internet users with purpose to access porn websites are teenagers, the research is supported by Carvalheiera and Gomes. Seeing internet content opportunities that contain sex as one of the needs, then many are capturing this as an opportunity so that today many people are providing sex services through electronic media. Sex workers in cyberspace provide a variety of services ranging from phone sex, chat sex, and video calls sex. This sex activity can be done privately and also publicly.

Phone sex is a communication activity to stimulate sex desire through the sounds, usually the service providers will have a voice to stimulate the sex desire his consumers. The consumers paid the cost of pulses telephone or telephone premium with the different rate

service, then in providing this service the provider is also requests to transfers some money for a phone sex service. The provider will speak up as if he was on real sex playing with the consumers, so the consumers will provoked into fantasizing with voice of the provider until the consumers achieve satisfaction that is masturbating.

Chat sex is a communication activity with chatting service between the provider chat sex service and his consumers. When the consumers want to get chatting who can stimulate the sex desire required to buy a pulse of communication tools. The cost of chat sex appropriate by the agreement of both, generally the service provider will sending his picture/photo that can be stimulate sex desire of the consumers. The video call sex is a communication activity that uses internet media namely video call.

The both parties between the consumers and the service provider can be interaction and directly seeing of both activity trough the video, so the sex activity as if a real. The various services was providing start from did not wear the clothes up to masturbate from the service provider. The user or consumers required to pay or transfer amount of money or give pulse to communicate appropriate the agreement of both. in its development no longer done between one individual with another individual so it can be private on giving service however, the service provider will broadcast sex activities from a movement or masturbation activities accompanied by a voice that can raise the desire and can witnessed by many people. Each of connoisseurs this service will be lured to pay, if want watching together if wouldn't the consumers will cancelled or would not permitted to witness these sex activity.

The cybersex classified as a criminal acts which include on decency acts. Muyana W. Kusumah stated that the sex crimes and related crimes are formulated by criminal law [7]. Technological progress was increasing the variety crimes include the decency. Now, new era is emerging, the digital era, the virtual world, the cyber world where the public life and interaction in cyberspace like on the real world. In fact, the public often enjoyed on the cyberspace longer than the real world. The interaction of each other to channelling the sex desire in a normal and legitimate relationship is through the marriage as the best way. Cybersex could cause someone don not want to life in a household with a marriage relationship. This is because have been satisfied, sexual desire trough the cyberspace that uses help of cybersex information technology. This act also could cause disruption and destruction of the domestic life. The service users both a man and women enjoyed the sex fantasy with the cybersex service provider than with his wife.

According to Cooper there are three component which cause why the individual doing the cybersex activities which abbreviated triple A engine, the accessibility, affordability, and anonymity. The service users felt satisfied and more peaceful on using this service than

using the service of the women sex worker. In additions Carner and friends increase two components that is isolation and fantasy.

4. The Urgency of Cybersex Regulation by Using Criminal Law

The regulation of an act using criminal law or policy criminal law cannot be separated from the value policy that will be protect. Law Number 11 of 2008 on information and electronic transactions have not yet been arranged clearly and detail. The matters that regulated in article 27 section 1 which reads: Everyone who purposefully and without right distributes, and/or transmit and or make access electronic information and or documents electronic which has content violate decency.

The threat of sanctions on section 45 that is: every man that fulfils the elements as referred on article 27 section (1), (2), and (3) or section (4) would convicted maximum imprisonment no longer than 6(six) years and or forfeit no much than Rp.1.000.000.000 (One billion). The attention focus on the word decency and cybersex include on acts of decency then the deed of cybersex including on this article. This matters becomes a problem when cybersex was doing by husband and wife relations because their live apart then became the subject of this article. Then the private things could not be given sanctions. The formulation is cybersex which has commercial to the public must be give a sanction. Now have been many social media that market cybersex service because it must be regulated rigidly about this act that is limiting the action commercialized so it can be given to the both commercialize or the users of service cybersex [9]. This offense is regulated as a formal offense its means this offense does not require consequences but only require the act to be done. This matter in order to protect moral values in forming civilized human beings.

IV. CONCLUSION

The regulation of cybersex criminal act based on the civilization value be an urgent matter to regulate. So far, cybersex was not clearly regulated so that on the law enforcement having difficulty. Such as the law enforcement theory which influenced by some factors there are low enforcement, legal substance, viability of facilities, public culture, and the public response to this actions. Decency in the criminal law was regulated on the criminal code article 281-303, decency focused on the improper sexual relations although the problem of behaviour decency including on the decency. The asses of whether a behaviour is appropriate or not with the decency value was explained by Roeslan Sholeh and Omar Senoadji relies on the prevailing religious beliefs and customs. The other formulation wisdom about the decency offence includes cybersex be regulated on law number (11) of 2008 and change on number (19) on 2016. The other formulation policy was regulated in law number (44) of 2008 on porn. All criminal law policy

formulations regarding cybersex crime has not yet detail regulated. Indonesia. It should be regulated by a separate article regarding cybersex criminal acts with formal offense.

REFERENCES

- [1] B. Suhariyanto, *Tindak Pidana Teknologi Informasi (Cybercrime)*, Jakarta: PT RajaGrafindo Persada, 2012.
- [2] B. Nawawi, *Bunga Rampai Kebijakan Hukum Pidana Perkembangan Penyusunan Konsep KUHP Baru*, Jakarta: Prenada Media Group, 2011.
- [3] M. Hatta, *Kebijakan Politik Kriminal*, Yogyakarta: Pustaka Pelajar, 2010.
- [4] T.Prasetyo, *Kriminalisasi dalam Hukum Pidana*, Bandung: Nusa Media, 2010.
- [5] R. Supusepa, "Kebijakan Kriminal dalam Menanggulangi Kejahatan Kesusilaan yang Bersarakan Internet (Cybersex)", *Jurnal Sasi*, Vol 17 No 4 bulan Oktober-Desember 2011
- [6] A. Raharjo, Y. Saefudin. Bureaucracy in Criminal Justice A Study of Criminogen Factors in Law Enforcement on Narcotics Crime Settlement International Conference on Administrative Science (ICAS 2017) 43, 6-10
- [7] A. Raharjo, Y. Saefudin, R Fidiyani. The influence of technology determinism in forming criminal act of legislation. *E3S Web of Conferences* 73, 2018, 12011
- [8] M Khakim. Undang-Undang Pornografi Dalam Tinjauan Politik Hukum Pidana. *Jurnal Hukum Novelty* 7 (1), 2016, 43-56